THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the U.S. District Court for the District of Oregon
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Employment

A microbiology professor hired to perform research for a local hospital stated age discrimination and retaliation claims under Oregon and federal law sufficient to defeat a summary judgment motion. The plaintiff had been hired on an annual in 1992 basis to assist a research director. When grant funding ran out, plaintiff stayed on under interim funding. The hospital eventually attracted a new director and new grant funding for the research program and plaintiff was rehired. Plaintiff claimed that from the day he first began to work for the new director, he was subjected to hostile and derisive comments. Plaintiff further claimed that the new director repeated told him that he was "too old," and "should retire," so that the director could hire someone "young" and "energetic." Plaintiff complained and thereafter, received poor performance reviews from the director. The poor performance reviews were then used as the basis for limiting plaintiff to part-time work. When plaintiff refused, he was placed on administrative leave and, at the end of his one-year term, his contract was not renewed. Defendants claimed plaintiff was not renewed because he was not "qualified" for the job. Judge Aiken held that because plaintiff had come forward with both direct and circumstantial evidence of discriminatory intent, genuine issues of material fact precluded summary judgment on the discrimination and retaliation claims.

However, the court granted a defense motion for summary judgment against plaintiff's 42 U.S.C. § 1983 claim finding that, even if the state action element was satisfied, plaintiff's employment was only for a fixed term and plaintiff had no "just cause" right within his contract, nor could he identify any rule, custom or policy that could give rise to a liberty interest in his continued employment. Judge Aiken also granted summary judgment against plaintiff's contractual claim for breach of the duty of good faith and fair dealing since the contract was terminated pursuant to an express termination right and the contract ended on its own terms.

Finally, the court granted summary judgment against plaintiff's intentional infliction of emotional distress claim finding nothing in the factual allegations that constituted extraordinary misconduct. Baskar v. OHSU, CV 98-1576-AA (Opinion, June, 2000).
Plaintiff's Counsel: Craig Crispin
Defense Counsel: Martin Dolan

Discovery

Judge Ann Aiken granted a plaintiff's motion to compel responses to interrogatories served upon the IRS. Plaintiff sought to challenge the imposition of a 20% penalty imposed by the IRS for "negligent disregard of rules or regulations" for treatment of pass through losses for an LLC. Plaintiff sought national statistics from the IRS evincing LLCs' treatment of such losses. Plaintiff argued that such information was necessary to determine the reasonableness of plaintiff's conduct and to determine how the IRS made its determination that plaintiff was negligent. The IRS

opposed the request on grounds that plaintiff was seeking information beyond the relevant scope of discovery.

Judge Aiken held that the defendant made reasonableness as issue by imposing a penalty premised upon "negligence." The court further rejected defendant's overbreadth challenge, finding that defendant failed to come forward with any evidence to support this assertion. The court further rejected defendant's argument that such statistics are not "routinely compiled," and thus, should not be produced.

Gregg v. United States of America, CV 99-845-AA (Order, May 19, 2000).

Plaintiff's Counsel:

Marc Sellers

Defense Counsel:

Jian Grant (D.C.)

Habeas

Judge Jones rejected the government's argument that a §2255 petition was untimely under the AEDPA because it was filed more than one year after entry of judgment and the defendant had waived appeal. The court held that the AEDPA's 1-year limitations period was not triggered until after the 10-day time for appeal had expired. United States v. Taylor, CR 97-344-JO (Order, June, 2000).

Administrative Proceedings

An attorney who routinely represents claimants denied social security benefits filed an action against the Social Security Administration (SSA) and three Administrative Law Judges (ALJs) for harm to his business reputation. Plaintiff contended that the three ALJs were biased against him and the clients he represented. Plaintiff asserted that one of the ALJs had threatened to deny any request for attorney fees if plaintiff filed a "frivolous" motion to disqualify the ALJ from a case. Plaintiff further alleged that this same ALJ contacted one of plaintiff's clients for the sole purpose of disparaging plaintiff. The SSA was named as a defendant for its failure to provide adequate protection to claimants and their representatives against biased ALJs.

Plaintiff sought declaratory and injunctive relief only; specifically, he sought an agency-wide policy change and an investigation into his charges against the ALJs. Plaintiff also sought an injunction against any of the three named ALJs from considering any cases in which the plaintiff represented an SSA claimant.

Defendants sought dismissal on grounds that the court lacked subject matter jurisdiction and/or the claims were barred under the doctrine of sovereign immunity.

Judge Janice M. Stewart denied the motion, finding that the Social Security Act does not foreclose a constitutional challenge under 28 U.S.C. § 1331. The court found that plaintiff asserted a colorable claim of the infringement of a liberty interest in the practice of law and the denial of due process sufficient to sustain a claim for mandamus relief.

Judge Stewart also found that sovereign immunity was waived via the APA and/or common law for a § 1331 claim seeking non-monetary relief. The court further rejected defendants' argument that plaintiff lacked standing because he was not a person within the zone of interests under the SSA; the court found that plaintiff was within the zone of interests for a 5th amendment claim and that he had sufficiently alleged injury in fact by one of the named ALJs and the SSA. Claims against the other 2 ALJs were dismissed with leave to replead. Lowry v. Apfel, CV 99-1210-ST (Findings and Recommendation, March 2, 2000; Adopted by Judge James Redden 6/00).

Plaintiff's Counsel:

Dave Markowitz

Defense Counsel:

Bill Youngman